

SCHEDULE 5

MEMORANDUM

APPLICATION FOR PERMANENCE ORDER WITH AUTHORITY FOR A CHILD TO BE ADOPTED

This memorandum is addressed to the parent or guardian of a child where an application is to be made to the court for a permanence order seeking authority for the child to be adopted. If any part of this memorandum is not clear to you, you should consult the adoption agency. You may seek advice from the adoption agency on any matter connected with the adoption of your child, and you may also wish to consult your solicitor. This memorandum is intended for guidance only and is not to be regarded as an authoritative interpretation of the law.

1. If the court makes an order called a “permanence order” granting authority for the child to be adopted:

- your responsibilities and rights as a parent or guardian to regulate the child’s residence and to provide guidance appropriate to the child’s stage of development will be transferred to the local authority;
- other rights and responsibilities may be transferred to the local authority or to specified persons;
- the adoption agency will then proceed to make arrangements for the child to be placed for adoption as quickly as possible;
- the court will grant authority for your child to be adopted which means that your consent to the adoption is not required before the making of an adoption order;
- the person wishing to adopt your child will apply to the court in due course and the court, if on investigation considers that this is in your child’s best interests, will make an adoption order without being required to consult you first.

2. If you wish your child to be brought up in a particular religious faith or have any other views on the upbringing of your child which you wish to be taken into account you should inform the adoption agency and it will take your wishes into account in selecting new parents for them as far as possible. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration.

3. The adoption agency needs to know whether each of the child’s parents or guardian agrees with its decision that an application for a permanence order with authority for the child to be adopted should be made. You are asked to complete a certificate (enclosed) indicating whether you agree or disagree with the application being made. Agreement is sought solely in relation to the adoption agency’s decision and is quite separate from the agreement required by the court (see paragraphs 4 and 5) in the subsequent application. You should read the certificate carefully, complete Part A or Part B and return it to the adoption agency within 28 days of receipt. If you do not indicate your agreement within 28 days, the adoption agency will be obliged to make the application for the permanence order seeking authority for the child to be adopted to the court within a set timescale determined by the circumstances of your child – the adoption agency or your solicitor will be able to advise you on how long this will take. If you do agree, and the adoption agency places your child with a person wishing to adopt them, then you will not be entitled to have your child returned to you without permission of the court or the adoption agency if you change your mind. If you change your mind, you should inform the agency at once.

4. The local authority has to apply to a court for a permanence order with authority for the child to be adopted. Before making an order, the court will require to know whether you (except where you are a father or mother of the child who does not have parental responsibilities and rights unless these have been removed by the making of a previous permanence order which does not grant authority for your child to be adopted) and any other parent with parental rights and responsibilities or guardian

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

of the child freely and with full understanding of what is involved, agree unconditionally to your child being adopted. The court will also have enquiries made to check that it is in the best interests of the child for the permanence order with authority for adoption to be made.

5. After the application is made to the court, you will be asked to sign a form of agreement which can be shown to the court as evidence of your agreement. Do not sign the form of agreement unless you are willing that the child should be adopted and you are also willing to give up your right to be party to the court proceedings when application is made for your child to be formally adopted in due course.

6. The court cannot make the permanence order granting authority for adoption without your agreement unless it dispenses with your agreement on certain grounds of if you are a parent who does not have parental rights and responsibilities unless these were removed by virtue of a previous permanence order which does not grant authority for the child to be adopted. The grounds on which a court can dispense with a parent's agreement are that:—

- (a) the parent or guardian is dead;
- (b) the parent or guardian cannot be found, or is incapable of giving agreement;
- (c) the court is of the opinion that the parent or guardian is unable satisfactorily to discharge parental rights and responsibilities in relation to the child (except the responsibility and the right to maintain personal relations and direct contact with the child on a regular basis) and is likely to continue to be able to do so;
- (d) where a permanence order (which does not include authority for adoption) has been made which removes the parental rights and responsibilities from the parents or guardian and it is unlikely that such responsibilities will be imposed on, or given to the parent or guardian;
- (e) if sub-paragraphs (c) and (d) do not apply the welfare of the child requires the consent to be dispensed with.

7. You are not allowed to receive any money for giving your agreement.

Right to apply for a variation of the permanence order

8. Any person who had parental rights and responsibilities in respect of the child immediately before the permanence order was made which were removed by the making of that permanence order may apply to the court for leave to make an application for a variation of certain provisions in the permanence order. The right also applies to any person who claims an interest, the local authority which made the application, the child (if they are over 12 or are capable of understanding the effect of the order) and any person who has had parental rights and responsibilities conferred on them by virtue of the permanence order.

9. An application to have the permanence order revoked may also be made by any person who is affected by the order but only where the leave of the court has been granted.

Birth records

10. When an adoption order is made, the Registrar General for Scotland makes an entry in the Adopted Children Register showing the adopters as the parents of the child. A full extract and an abbreviated certificate of the entry in that Register (which takes the place of the child's original birth certificate) can be obtained by the adopters from General Register Office, New Register House, Edinburgh on payment of a fee. Where the child reaches the age of 16, they will be entitled to see the original entry in the birth register and to purchase a certificate of that entry if they so wish. This means that when the child is 16 they will be able to find out their original names as well as your name and your address when you registered their birth. Should you wish, the adoption agency will discuss with you the possible implications this may have for you in the future.